

**Notice of Allowability**

Application No.

10/632,265

Applicant(s)

PENNER, AVI

Examiner

Art Unit

Carl H. Layno

3766

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Papers filed on May 21, 2007.
2. ☒ The allowed claim(s) is/are 1,3-9,11-14,17-19,21-29,31-40 and 43-45.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application   |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>5/24/07</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                   |
|  | 9. <input type="checkbox"/> Other _____   |

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's after final amendment, which was received by the Office on May 21, 2007.
2. Claims 2, 10, 15, 16, 20, 30, 41, and 42 are canceled. Claims 1, 3-9, 11-14, 17-19, 21-29, 31-40, and 43-45 are active.

### ***Claim Rejections - 35 USC § 102***

3. Upon further reconsideration of applicant's amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(e) rejection of Leysieffer (US 6,198,971), which was made against claims 1, 3, 6-8, 14, 15, 17, 21, and 42 in the last Office action.

### ***Examiner's Amendment***

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William English on May 24, 2007.

The application has been amended as follows:

-Please modify claims 4 and 13 to read as follows:

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“4. (Currently Amended) An implantable stimulator comprising:  
one or more acoustic transducers configured to transform acoustic waves into electrical current;  
a stimulating electrode configured to output stimulation energy to adjacent tissue, wherein the stimulation energy is generated in response to the electrical current; and  
an energy storage device configured for storing the electrical current as electrical energy.”

“13. (Currently Amended) An implantable stimulator, comprising:  
one or more acoustic transducers configured to transform acoustic waves into electrical current;  
a stimulating electrode configured to output stimulation energy to adjacent tissue, the stimulation energy based on the electrical current,  
wherein the stimulation energy is directly transformed from the electrical current and wherein the stimulation energy output from the stimulating electrode is configured to therapeutically stimulate heart tissue.”

***Allowable Subject Matter***

5. Claims 1, 3-9, 11-14, 17-19, 21-29, 31-40, and 43-45 are allowed.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Chirife (US 5,168,869) patent is cited for its pertinent sound transducer circuit 12 (Fig.2) and cardiac pulse generator 34 with attached electrodes (not shown or labeled). Unlike applicant's claimed device (claim 13), that of Chirife fails to teach that the stimulation energy is “directly transformed from the electrical current” from the acoustic transducer. The device of Chirife also fails to disclose an energy storage device configured to store “the electrical current” of the acoustic transducer, as required by claims 4 and 5.

The Offutt (US 5,712,917) patent describes a system and method involving an implantable hearing aide (Figs.1-3) comprising an acoustic transducer in the form of a microphone **68** (Fig.4), a stimulating electrode **18**, a battery **60**, and an on-off switch **66**. Unlike applicant's claimed device, the switch of Offutt is not controlled by a communications signal to "alternately open and close" to generate stimulation energy (claim 1). In addition, the battery is not used for storing energy obtained from the microphone **68** (claims 4, 5).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on M-F from 9AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, a voice message may be left on the Examiner's phone or a mail message may be sent to the Examiner's e-mail address [carl.layno@uspto.gov](mailto:carl.layno@uspto.gov) . Alternatively, a fax may be sent. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*Carl H. Layno*

CARL LAYNO  
PRIMARY EXAMINER

CHL

5/24/2007